In the Supreme Court of the United States

OCTOBER TERM, 1965

No. 790

SIGNAL MANUFACTURING CO., PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. 7-8) is reported at 351 F. 2d 471. The Board's Decision and Order are reported at 150 NLRB No. 110.

JURISDICTION

The judgment of the court of appeals was entered on October 14, 1965 (Pet. 7). The petition for a writ of certiorari was filed on December 2, 1965. The jur-

isdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the Board properly found that the employer violated his bargaining obligation under the National Labor Relations Act by refusing to meet and deal with a duly elected union steward.

STATUTE INVOLVED

Sections 7 and 9(a) of the National Labor Relations Act (61 Stat. 136, 29 U.S.C. 151, *et seq.*) are set forth at pp. 2-3 of the petition. Sections 8(a)(1) and 8(a)(5) of the Act also are relevant. Their pertinent parts are as follows:

> Sec. 8.(a) It shall be an unfair labor practice for an employer—
>
> (1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;
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> * * * *
>
> (5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9(a).

STATEMENT

For a number of years, the Union [1] has been the recognized representative of petitioner's production

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[1] Amalgamated Local 257, International Union of Electrical, Radio and Machine Workers, AFL-CIO.

and maintenance employees (B.A. 3).[2] The collective bargaining agreement in effect at the time the events herein occurred included a three-step grievance procedure, with the Union's departmental steward having a role at each of the steps (B.A. 4; 16-17). Employee Charles Silvia was one of the Union's 16 elected departmental stewards in petitioner's plant (B.A. 4; 17).

Louis Zaiger, the founder of the Company and for many years its president and operating head, died on Thursday, May 14, 1964 (B.A. 4; 31-32). When Foreman Doucette told Silvia of Mr. Zaiger's death, Silvia said, "Good, why didn't he take Bernie Ruskin [petitioner's director of manufacturing] with him" (B.A. 4; 32). Doucette reported this remark to his superiors, including Ruskin, and, on the afternoon of May 14, Company officials decided that, because of Silvia's remark, they would thereafter refuse to deal with him as a steward or as a representative of the Union (B.A. 4-5; 32-34, 35-37).[3]

The Company has adhered to its decision not to deal with Silvia (B.A. 5; 18-19, 21-22, 28-30), who has continued to be the duly elected shop steward from his department (B.A. 20). Grievances from Silvia's

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[2] References designated "B.A." are to portions of the record printed as an appendix to the Board's brief in the court below.

[3] In addition to being an elected departmental steward, Silvia was also a part-time paid business representative of the Union, in which capacity he conferred with employees outside the plant and occasionally communicated with petitioner's officials (B.A. 4; 17-18).

department, which he would normally sign as steward, have continued to be processed in accordance with the contractual procedure, except that another steward has signed the grievances and appeared at all conferences and meetings in Silvia's place (B.A. 5; 20-21, 25, 28, 30-31).

Upon charges filed by the Union, the Board concluded that the Company violated Section 8(a)(5) and (1) of the Act by refusing to deal with Silvia as the Union steward duly elected by the employees in his department (B.A. 9-10). The Board ordered the Company to cease and desist from the unfair labor practice found; to bargain upon request with the Union through any representative, including Silvia, properly chosen by it; and to post appropriate notices (B.A. 2, 10-12).

The court of appeals, while expressing disapproval of Silvia's remark, affirmed the Board's holding that this remark was insufficient to warrant the Company's refusal to deal with Silvia as the duly elected Union steward and enforced the Board's order (Pet. 7-8).

ARGUMENT

Sections 7 and 9 of the Act give employees the right to bargain collectively through representatives of their own choosing. Thus the identity of employee representatives is ordinarily beyond an employer's legitimate interest, and it is well settled that an employer violates Section 8(a)(5) and (1) of the Act by refusing to negotiate or process grievances with a par-

ticular individual selected by his employees.[4] The only question presented here is whether the justification advanced by the Company for not dealing with Silvia was sufficient to render this general principle inapplicable in this case. This issue, turning on the unique facts of this particular case, was correctly resolved by the court below and presents no occasion for further review.

As the Board pointed out (B.A. 7), "Silvia's callous indifference * * * towards the Company's loss of its widely respected founder is by no means to be condoned." But the remark was uttered on only one occasion and then only to the foreman. It did not "reveal fundamental hostility to the interests of the Company such as to justify a conclusion that Silvia's continued participation in the collective-bargaining process would impede the smooth course of collective bargaining" enjoyed in the past; nor was there any evidence that Silvia had ever before "acted or spoke[n] improperly in his entire career as a union representative" (B.A. 7-8). In these circumstances, and since the employees continued to desire Silvia as their

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[4] *National Labor Relations Board* v. *Roscoe Skipper, Inc.*, 213 F. 2d 793, 794 (C.A. 5); *National Labor Relations Board* v. *Deena Artware, Inc.*, 198 F. 2d 645, 650-651 (C.A. 6), certiorari denied, 345 U.S. 906; *National Labor Relations Board* v. *Marden Mfg. Co.*, 217 F. 2d 567, 570, n. 7 (C.A. 5), certiorari denied, 348 U.S. 981; *Standard Oil Co.* v. *National Labor Relations Board*, 322 F. 2d 40, 44 (C.A. 6); *National Labor Relations Board* v. *Blanton Co.*, 121 F. 2d 564, 567, 571 (C.A. 8); *Deeco, Inc.*, 127 NLRB 666, 667; *Prudential Ins. Co.*, 124 NLRB 1390, enforced as modified, 278 F. 2d 181 (C.A. 3).

spokesman in grievance matters, the Board was warranted in concluding (B.A. 7): "To deny to that entire group now the right guaranteed by statute to be represented by a fellow worker of their own choice, solely on the ground of an isolated utterance, however improper by Silvia, would amount to an unreasonable balancing of his single act of disrespect against their fundamental privilege."

National Labor Relations Board v. *Kentucky Utilities Co.*, 182 F. 2d 810 (C.A. 6), is distinguishable on its facts. There, the employer refused to bargain or to discuss grievances with Braswell, one of the certified union's international representatives. Braswell was a disgruntled former employee of the company, who, on numerous occasions after it had discharged him, had expressed his hostility to the company and its officials as well as his purpose to harm the company financially in order to ruin it. In these circumstances, the Sixth Circuit held that bargaining with Braswell would have been "a futility" and that the employer was justified in refusing to meet with him or with the union as long as this particular individual was a member of the union's negotiating committee (182 F. 2d at 813). No such circumstances were involved in the present case.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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DECEMBER 1965.

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